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HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench : Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ

Criminal Appeal No.677 of 2001

Janakram

Versus

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Hon'ble Shri Justice L.C. Bhadoo

Sd/-
L.C.BHADOO
Judge
-07-2007

Hon'ble Shri Justice Dhirendra Mishra

Sd/-
DHIRENDRA MISHRA
Judge

Post for 24-07-2007

Sd/-
L.C.BHADOO
Judge
-07-2007

(42)

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench : Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ

Criminal Appeal No.677 of 2001

Appellant : Janakram, S/o Garjaram Basod, Aged about 36 years, R/o village Kunkuri (Bazar Dand), P.S.H. & Teh. Kunkuri, Distt. Jashpur (CG).

Versus

Respondent : State of Chhattisgarh, Through P.S.H. Officer, P.S.H. Kunkuri, Distt. Jashpur (CG).

Present : Shri J.K. Shastri, counsel for the appellant.
Shri Akhil Mishra, Panel Lawyer for the State.

JUDGMENT

(Delivered on 24th July, 2007)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J*** : -

1. The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 30-6-2001 passed by the IIIrd Additional Sessions Judge (Fast Track Court), Jashpurnagar, in Sessions Trial No.24/2001 whereby he has been held guilty for commission of offence under Section 302 of the Indian Penal Code for causing death of his wife namely, Devanti Bai, sentenced him to undergo imprisonment for life.

2. The case of the prosecution, in brief, is that the accused was not maintaining good health, therefore, on 23-8-2000 the family members along with accused while going for pilgrimage stayed in the house of Lalkuram (brother-in-law of the accused). In the night after taking dinner, the family members went for sleep, however, Lalkuram, the brother-in-law of the accused, his son and the accused were talking. Thereafter Lalkuram asked the accused to go for sleep, he went out of the house to attend the call of nature. When he returned after attending the call of nature, he saw that the accused attacked his wife Devanti Bai with an axe on her neck. On hearing sound Shankarram came to that side. He saw that after attacking Devanti Bai, accused handed over the axe to Lalkuram saying that whatever he wanted to do he has done it. Lalkuram kept the axe. In the meantime, the news

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spread in the village. Devanti Bai succumbed to the injuries spontaneously. Merg intimation (Ex.P/7) was given by Lalkuram on the next day morning i.e. 24-8-2000. On the basis of that, First Information Report (Ex.P/1) was registered by the Police of Police Station Narayanpur. The Station House Officer after registering the case under Section 302 of the Indian Penal Code left for scene of occurrence. He prepared inquest (Ex.P/2) on the body of Devanti Bai. The Investigating Officer collected blood stained & plain soil from the place of occurrence and one *kathri* (bedding) under Ex.P/3. Axe was seized under Ex.P/4. The underwear of the accused was seized under Ex.P/5. Patwari Halka prepared the site plan under Ex.P/6. The body of Devanti Bai was sent for postmortem examination to Primary Health Centre, Kunkuri under Ex.P/8 where Dr. S. Toppo conducted postmortem and prepared report (Ex.P/8A). Doctor opined that the cause death was hemorrhagic shock due to the incised wound (cut wound) over the neck. The death was homicidal in nature.

3. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jashpur, who in turn committed the case to the Court of Sessions Judge, Raigarh, from where learned III[rd] Additional Sessions Judge (Fast Track Court), Jashpurnagar, received the same on transfer for trial.

4. In order to establish the charge against the accused/appellant, the prosecution examined 6 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he admitted that Devanti Bai was his wife, he also admitted that while going to pilgrimage on the way they stayed at the house of Lalkuram. He has also admitted that after taking dinner, the family members went for sleep. However, he has denied that he attacked his wife and stated that his wife was lying at the door and there was injury on her neck, how he can attack his wife.

5. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6. We have heard Shri J.K. Shastri, learned counsel for the appellant and Shri Akhil Mishra, learned Panel Lawyer for the State.

7. Shri Shastri, learned counsel for the accused/appellant, has not disputed the homicidal death of Devanti Bai. Moreover, from the

evidence of Lalkuram (PW-1), who in fact saw that accused attacking Devanti Bai with axe and evidence of Shankarram (PW-2), who saw the accused handing over the axe to Lalkuram (PW-1) saying that whatever he wanted to do he has done it. Their evidence is corroborated by the medical evidence of Dr. S. Toppo (PW-6) who has stated that on 24-8-2000 he conducted postmortem on the body of Devanti Bai and there was incised wound on the neck in the size of 6 x 2.5 x 1 cm., lower cervical vertebra was cut, there was a fracture in cervical vertebra, cause of death was due to cut injury and cutting of cervical vertebra and the same was homicidal in nature. In cross-examination, he has stated that neck was not separated, but the same was hanging, therefore, in view of the ocular & medical evidence, it is established that the death of Devanti Bai was homicidal in nature.

8. As far as involvement of the accused/appellant in the crime in question is concerned, learned counsel for the appellant has not disputed this fact also. Moreover, Lalkuram (PW-1), who is brother-in-law of the accused (real brother of the deceased), has stated that on 22-8-2000 Devanti Bai, accused, two children & father of the accused came to his house. The mind of the accused was not alright. The accused and his family members stayed at his residence while going for pilgrimage. They came about 6.00 p.m. in the evening. Thereafter his sister cooked the meal and everybody took the dinner. The family members went for sleep. He along with his son Shankarram and the accused were talking. Thereafter he asked the accused to go for sleep, the accused asked him where he should sleep, then he asked him that his wife must have laid the bed, he can go and sleep there. He went outside the house to answer the call of nature. After answering the call of nature, when he was at the door, he saw that the accused attacked on the neck of Devanti Bai with the axe, as a result of which neck of Devanti Bai was cut and she said "*oh dada oh mother save me*". His son Shankarram and his mother lifted Devanti Bai, but she was dead. The accused handed over the axe to him and said that whatever he wanted to do he has done it. He kept the axe. Thereafter he went and lodged the report (Ex.P/1) in Police Station. In cross-examination of this witness, the defence has not been able to discredit the evidence or has not been able to bring any material on record to show that the evidence of this witness is not reliable.

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9. Moreover, Shankarram (PW-2), son of Lalkuram (PW-1) stated that when he heard the sound, he came towards that side and saw that the accused handed over the axe to his father (Lalkuram). Devanti Bai was lying on the door and she was asking for water. He brought water by that time she was already dead. Lalkuram (PW-1) is the real brother-in-law of the accused. Even the accused in his statement under Section 313 of the Cr.P.C. has admitted that on the fateful night he along with his wife and other family members stayed at the residence of Lalkuram. There is no reason for Lalkuram to implicate his brother-in-law in a false case that too for committing the murder of his sister and wife of the accused. Therefore, involvement of the accused in committing the murder of Devanti Bai has been established beyond reasonable doubt.

10. Learned counsel for the accused/appellant argued that the accused was mentally ill and, therefore, he committed the crime, as such he is entitled for the benefit under Section 84 of the I.P.C.

11. On the other hand, learned counsel for the State supported the judgment of the trial Court.

12. Section 84 of the I.P.C. exonerate a person from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong. The onus of proving unsoundness of mind is on the accused.

13. The insanity is of two types i.e. (i) legal insanity; and (ii) medical insanity. While considering the provisions of Section 84 of the I.P.C. the Court is concerned with legal insanity, and not with medical insanity. As per the provisions of Section 105 of the Indian Evidence Act, 1872 the burden of proof rests on an accused to prove his insanity, and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The

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burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding as has been held by the Apex Court in the matter of **Dahyabhai v. State of Gujarat** reported in **AIR 1964 SC 1563**. In such a case, the primary burden is on the prosecution to establish that the accused has committed the murder and or of ingredients of murder are satisfied, then burden shifts on the accused to prove that on account of insanity, unsoundness of the mind, the act of the accused falls under Section 84 of the I.P.C. Because on account of the unsoundness of the mind, he was at the time doing the act incapable of knowing the nature of the act that he is doing what is either wrong or contrary to law, then he is protected.

14. Section 84 of the I.P.C. embodies the fundamental maxim of criminal law, i.e., *actus non reum facit nisi mens sit rea* (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will (*furios is nulla voluntas est.*).

15. The benefit of Section is available only after it is proved that at the time of committing the act; the accused was labouring under such a defect or reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the: defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of: exemption from criminal responsibility.

16. In the matter of **Sherali Walli Mohammed v. State of Maharashtra** reported in **1972 Cr LJ 1523 (SC)** the Apex Court held that mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open would not indicate that he was insane or that he did not have necessary mens rea for the offence. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of

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a psychopath affords no protection under Section 84 as the law contained in that section is still squarely based on the outdates Naughton rules of 19th Century England. The provisions of Section 84 are in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords, in **M. Naughton's case (1843) 4 St. Tr. (NS) 847**. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient.

17. Where during the investigation of previous history of insanity is reveled, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors.

18. In the present case, no defence of insanity was raised before the trial Court. Even though Lalkuram (PW-1) has stated in examination-in-chief that the mind of the accused was not alright, but there is no medical evidence or any other fact i.e. the conduct of the accused prior to the commission of the crime or after commission of the crime that he was suffering from unsoundness of the mind and that he was not capable to understand nature of his act that he is doing whether he is either doing wrong or contrary to the law. There is no iota of evidence

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that at any point of time the accused was suffering from unsoundness of mind that too the legal insanity as required under Section 80 of the I.P.C. Merely saying by Lalakram (PW-1) that the mind of the accused was not alright, does not satisfy the requirement of Section 84 of the I.P.C. without any medical evidence or any other material brought on record establishing that the accused was suffering from unsoundness of the mind at the time of commission of offence. Even no application was moved before the trial Court in order to get the accused examined in order to ascertain his mental condition nor there is any material on record to show that even after the commission of the crime during the police custody or judicial custody the accused is suffering from unsoundness of mind or he was suffering from unsoundness of the mind before or at the time of commission of the crime. Therefore, virtually the accused has not been able to discharge his burden as per the provisions of Section 105 of the Indian Evidence Act, 1872, therefore, the accused is not entitled for benefit of Section 84 of the I.P.C.

19. For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court convicting the accused for committing offence under Section 302 of the Indian Penal Code.

20. In the result, the appeal being devoid of merit deserves to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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